

---

**(1975) 01 AHC CK 0042**

**In the Allahabad High Court**

**Case No :** Second Appeal No"s. 199 and 212 of 1968

Thakur Radha Krishnaji Maharaj and Others

APPELLANT

Vs

Ram Prasad Pandey and Others

RESPONDENT

---

**Date of Decision :** 22-01-1975

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100, 92

**Citation :** AIR 1975 All 268

**Hon'ble Judges :** Jagamohan Lal, J

**Bench :** Single Bench

**Advocate :** N.M. Tilhari, for the Appellant; K.N. Misra, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Jagamohan Lal, J.—This judgment shall govern Second Appeals Nos. 199 and 212 of 1968. Both these second appeals arise out of the same suit filed on behalf of Sri Tbakur Radha Krishnaji Maharaj Birajman Mandir Waqey House Murtaza Nagar, District Unnao through a next friend named Raja Ram in the court of Civil Judge Unnao. The allegations contained in the plaint were that a temple was constructed by Sewak Ram Pandey who also dedicated some property to this temple under a waqf deed dated 30th July, 1906. He appointed himself as the first Muta-walli and laid down a scheme of management and appointment of subsequent Mutawallis and managers. Sewak Ram died in 1918 and after his death his eldest son Raja Ram became the Manager and Mutawalli of this waqf. Raja Ram also died on 26-7-1965. According to the plaintiff, Raja Ram had under his will appointed Ram Gopal defendant No. 1 as a Mulwalli after his death. Subsequently his appointment was also confirmed by a Supervisory Committee known as Dharam Sabha which had also been provided by the dedicator under the deed of waqf. The members of the Dharam Sabha, according to the plaintiff, were defendants Nos. 6 to 8. The defendant No. 2 Ram Prasad (who is respondent No. 1 in these appeals) began to interfere unlawfully with the management of this temple and the property attached to it. The plaintiff

therefore filed a suit in the court of Civil Judge for framing a scheme of management and appointing defendant No. 1 Ram Gopal as Manager and in case he was not considered a fit person for this appointment, it was prayed that Ram Krishna, the next friend of the idol, may be appointed as such Manager and Mutawalli, and in case he too was not found suitable, the Court may appoint any other person as Manager and Mutawalli out of the male descendants of the dedicator Sewak Ram.

2. The suit was contested by defendant No. 2 Ram Prasad Pandey who pleaded inter alia that it was a public waqf and not a private waqf. As such the court of Civil Judge had no jurisdiction to entertain the suit and frame a scheme of management. A suit of this nature ought to have been filed in the court of the District Judge after complying with the formalities prescribed by Section 92 of the Code of Civil Procedure.

3. The trial court held that it was a private waqf and not a public religious and charitable trust. The other pleas taken by the contesting defendant were overruled. The suit was decreed and a preliminary decree was passed for framing a scheme of management without giving any direction regarding the appointment of defendant No. 1 or the next friend of the plaintiff as a Manager in that scheme.

4. Against that decision the defendant Ram Prasad filed an appeal in the Court of the District Judge challenging the various findings recorded by the trial court. Another appeal against that decision was filed on behalf of the plaintiff making a grievance that under the scheme to be framed, a direction should have been given by the trial court regarding the appointment of defendant No. 1 Ram Gopal Pandey or the next friend of the plaintiff as Manager and Mutawalli.

5. The learned District Judge holding that that it was a public waqf and as such this suit filed in the court of Civil Judge was barred by Section 92 of the Code of Civil Procedure, allowed the appeal filed by defendant No. 2 Ram Prasad and dismissed the suit. The other appeal filed on behalf of the plaintiff was consequently dismissed. Against those decisions the present two second appeals have been filed in this Court.

6. The only point that arises for decision of these appeals is whether the dedication made by Sewak Ram Pandey constituted a public religious and charitable endowment and if so whether the suit filed in the court of the Civil Judge without complying with the provisions of Section 92 CPC was maintainable.

7. A certified copy of the deed of endowment dated July 30, 1906 which was a registered document is on the record vide Ext. 4. The relevant clauses contained in this document were that the dedicator Sewak Ram stated that he had constructed a temple of Mahadeoji and a Thakurdwara in village Murtaza Nagar and the temple so constructed by him was known as Thakurdwara of Radha Krishnaji and that through this document he was going to dedicate the property as detailed in that document. This property consisted of some Zamindari

property yielding an annual income of Rs. 800/- after payment of land revenue.

8. Sewak Ram appointed himself as the sole Manager of the endowed property during his lifetime and thereafter laid down the line of succession to the office of the Manager. The dedicated property was to be mutated in the name of Thakur Radha Krishnaji and it was so mutated in the revenue papers. At that time Sewak Ram had four sons of whom Raja Ram was the eldest. The scheme laid down by Sewak Ram provided that after his death his eldest son Raja Ram shall be the Manager of the endowed property. But if for any reason Raja Ram did not want to manage the property or he relinquished the office of managership, his other son Sitaram shall be appointed as Manager, and after Sitaram his third son Ganga Prasad shall be appointed Manager. After Ganga Prasad the office of the Manager was to go to the dedicator's grandson Misri Lal son of Sitaram. The office of Manager of the endowed property shall always go to a male lineal descendant of the dedicator. But in case there was no such lineal male descendant alive in his family, then the male descendant of his sister's son Kali Charan shall be appointed Manager. Under that very scheme Kali Charan was appointed as a Karinda of the trust property.

9. Sewak Ram also provided for the constitution of a Panchayati Dharam Sabha consisting of three persons who had been named by him and who belonged to different villages and different castes none of them being a relation or family member of Sewak Ram. This Dharam Sabha was given supervisory functions over this dedicated property. The Manager for the time being shall manage the property and the affairs of the temple on the advice of this Dharam Sabha. In case of a difference of opinion among the members of the Dharam Sabha the majority opinion shall prevail. It was further provided that if any member of the Dharam Sabha died or relinquished his office, the other members of the Dharam Sabha shall fill up that vacancy.

10. It was also provided that the Manager shall not do any act against the terms of the deed, and if he did so, he shall be liable to be removed by the members of the Dharam Sabha by majority of votes and another Manager shall be appointed in his place who may discharge his duties honestly, faithfully and intelligently, and if the endowed property suffered any loss due to the negligence on the part of the Manager then the Manager shall be personally liable for making good such loss. No one shall be entitled to alienate by way of sale or gift the endowed property. There shall be at least one meeting every year of the Dharam Sabha in which the accounts would be scrutinized and the policy matters would be settled. If however the Manager required any advice of this Dharam Sabha it could be called as often as necessary. In such meeting even two members of the Dharam Sabha would form the quorum. A Pujari for doing Pooja and rendering service to the deities was also provided in the scheme and his salary was laid down in it. It was however provided that a Pujari could be removed by the Manager for misconduct (but not for some minor fault), but in doing so the Manager will be guided by the advice of the Dharam Sabha.

11. Provision was also made about the expenditure that was to be incurred out of the income of the endowed property. Among other things, this expenditure would include Rs. 120/- per annum to be paid to the Manager as his remuneration and Rs. 60/- per annum as paid to the Karinda-Mukhtar-a-am who at that time was Kali Charan, sister's son of the dedicator. After payment of these salaries and making other expenditure on Bhog etc. as provided in the document, the balance of the income was to be deposited and from those savings other property could be purchased which shall form part of the endowed property. There was also provision that if per chance any of the male descendants of the dedicator became a pauper, he would be paid Rs. 3/- per month as maintenance. The document also mentioned about the holding of an annual Mela in connection with this temple.

12. Besides these terms and conditions as contained in the deed of endowment, the lower appellate court on a consideration of the evidence has recorded the findings of fact that the temple was a Shivala away from the house of the dedicator and it was not part of his house. The idols of eight Hindu Gods and Goddesses commonly worshipped by the Hindus were installed in this temple. On scrutiny of the oral evidence the learned District Judge further found that it had been established beyond doubt that the members of the public had been offering worship inside the temple of Mahadcoji and Thakurji as of right and not with the permission of the Manager. It was also found that Melas were held at this temple on the occasion of Shivaratri and Janamasthami and that the inhabitants of village Murtaza Nagar and adjoining villages attended such Melas in large number and the festivities of the Melas continued for about 8 or 10 days on each occasion. The visitors to the temple offered worship at the temple.

13. The description of the temple as given by the learned District Judge in his judgment was that the Shivala was about 66 feet high and the circumference of the temple was 56 feet. The dome of the temple measured 4.2 Gattas in circumference. The District Judge was of the view that the temple of Mahadeoji and Thakurji presented the look of an imposing structure.

14. From the above facts it is evident that the temple that had been built by Sewak Ram Pandey was an ordinary public temple found in this part of the country and it was not that a portion of his house was reserved by him for the deities. The temple contained the idols of deities who are commonly worshipped among the Hindus. The deed of endowment did not exclude any person having faith in those deities from visiting the temple and having Darshan of the presiding deities therein, or doing their pooja. The dedicator, though he did not say so in specific terms that this temple would be open to all the Hindus of that village and the neighbouring villages, contemplated that annual Melas would be held and provided for annual expenditure to be incurred in connection with those Melas. From the time this temple was constructed, the Hindu public of this village and the neighbouring villages had been visiting and participating in the Melas held on the occasion of Shivaratri and Janamasthami. On other days also

members of the Hindu public had been visiting the temple and doing Pooja as of right and not with the leave or licence of any Manager, as found by the lower appellate court. A committee consisting of three persons who were outsiders and did not belong to the family of the dedicator had been entrusted with advisory as well as supervisory role over the affairs of this temple and the management of the property dedicated to it. The Manager was of course to be appointed from the male lineal descendants of the dedicator so long as any suitable person was available from that line and he was to receive Rs, 120/- per year as his remuneration. But in case of misconduct or negligence he could be removed by the supervisory body, Dharam Sabha, and any other person could be appointed in his place.

15. If on these facts the lower appellate court held that it was a public temple and the endowment was for public purposes of charitable and religious nature within the meaning of Section 92 of the Code of Civil Procedure, I see no good reason to take a different view in the matter. However, before parting with this case, I may refer to certain decisions of the Privy Council and the Supreme Court which were cited at the Bar. These decisions in chronological order were as follows :

1. AIR 1938 195 (Privy Council) .
2. AIR 1940 7 (Privy Council) .
3. Deoki Nandan v. Murlidhar (AIR 1957 SC 113).
4. Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, .
5. The State of Bihar and Others Vs. Charusila Dasi, .
6. Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, .
7. Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, .
8. The Bihar State Board of Religious Trust Vs. Palat Lall and Another, .

16. The upshot of these decisions is that it is essentially a question of fact in each case to determine whether the endowment is for public purposes of charitable or religious nature or it is a private endowment though of religious or charitable nature. Some principles have of course been enunciated in some of those decisions for the appreciation of facts and circumstances brought on record for coining to a conclusion one way or the other.

17. In AIR 1938 195 (Privy Council) there was no deed of endowment. But on considering the dealings of the public with regard to the Thakurdwpra which was claimed to be a public trust, it was observed by the Privy Council that to constitute a trust created or existing for a public purpose of a charitable or religious nature the author or authors of the trust must be ascertained, and the

intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover the purpose of the trust, the trust property, and the beneficiaries must be indicated so as to enable the Court to administer the trust if required. All these condition are fulfilled in the present case because there is a deed of endowment which contains all these terms and conditions.

18. In AIR 1940 7 (Privy Council) also there was no deed of endowment and nature of the endowment was determined on the basis of facts and circumstances brought on record. It was held by the Privy Council that where a grant of a temple is made to an individual or family and the family has treated the temple as family property, dividing the various forms of profit whether offerings or rents, it is not enough to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual Melas. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact or user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity.

19. Obviously the facts on the basis of which the temple was held to be a private temple were quite different from the facts of the present case.

20. In AIR 1957 SC 113 it was held by the Supreme Court that the question whether a Thakurdwara is a public endowment or a private one is one of mixed law and fact. It was further observed that the distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. A religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

21. In the present case a major portion of the income of the endowed property was to be spent on doing Pooja and service to the presiding deities and the manage the Melas held on the occasions of important religious festivals in which the Hindus in general of the locality participated. In this very case, the Supreme Court had held that though the endowed property is dedicated to an idol and an idol being a juristic person is capable of holding property, the true beneficiaries of the religious endowment are not the idols but the worshippers and the purpose of the endowment is the maintenance of that worship for the benefit of

the worshippers.

22. In *Ram Saroop Dasji Vs. S.P. Sahi*, Special Officer-in-charge of The Hindu Religious Trusts and Others, the distinction between a public and a private religious endowment was brought out by the Supreme Court by making the following observations extracted in head-note (b) of the report.

"The essential distinction in Hindu Law between religious endowments which are public and "those which are private is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust." Similar observations were made by the Supreme Court in *The State of Bihar and Others Vs. Charusila Dasi*, .

23. In *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, it was held by the Supreme Court that the question of intention to dedicate the place for the use of the public or of the user by the public being as of right is necessarily a matter for inference from the nature of the Institution and the nature of the user and the way the institution has been administered. In the present case all these matters point out that it was a public temple.

24. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, there was no deed of endowment and the question had to be determined with reference to facts and circumstances brought on record. Head-note (b) of the report which brings about the distinction between a private and a public temple reads as follows :--

"Where evidence in regard to the foundation of a temple is not clearly available, the question whether a Hindu temple is public or private is determined by relying on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the members of the public in the darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple.""

25. In *The Bihar State Board of Religious Trust Vs. Palat Lall and Another*, certain properties were endowed in favour of an idol by means of a will executed by the

dedicator. The idol was worshipped all along by the family members and the public was not allowed to worship as of right and in the will also it was not made clear whether the public would be admitted as of right. Intervention of public was neither intended nor allowed. On those facts it was held to be a private endowment. Obviously the present case is quite distinct on facts from that case.

26. None of these cases can support the appellant's contention that on the basis of the facts as found above, this temple should be held as a private temple and not a public temple. In my opinion, the view taken by the lower appellate court is correct and these appeals have no merit in them. The appeals are dismissed with costs.